

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION (LD) NO.2087 OF 2006

Vikas Bhoite.

...Petitioner.

Versus

State of Maharashtra & Ors.

...Respondents.

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Mr. Prasad Pathare h/f. Rajesh Bindra for the Petitioner.

Ms. S.M. Dandekar, AGP for Respondent No.1.

Ms. Kiran Bagaria for Respondent No.2.

Smt. A.R. Joshi for Respondent No.3.

Ms. Vandana Mahadik for Respondent No.4.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

November 22, 2006.

**P.C.:**

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

The Petitioner claims to be a tenant of the Fourth Respondent in respect of the premises of a shop being Shop No.Ex-

5B, admeasuring 152 sq.ft. situated at New Parsi Chawl, Sion Bandra Road, Mumbai. According to the Petitioner, his mother was originally a tenant in respect of the shop and the rent receipt issued by the Fourth Respondent, the landlord, is annexed to the petition. The immovable property is stated to have been conveyed to the Fourth Respondent by a registered Deed of Conveyance of 9<sup>th</sup> November 1993 executed by the erstwhile owner. The tenancy is stated to have been transferred in favour of the Petitioner by his mother, Laxmibai Bhoite and a rent receipt was thereupon executed by the Fourth Respondent in favour of the Petitioner. The business of leather products has been conducted in the premises. A Shops and Establishments Licence has been issued by the Municipal Corporation which has been renewed from time to time. Copies of the registration certificate issued by the sales tax authorities, of an electricity bill and the rent receipt is annexed to the Petition.

In 2001 the Municipal Corporation took up a project of widening the Sion-Bandra Road and issued a notice dated 29<sup>th</sup> November 2001 calling upon the Petitioner to prove the authorisation

of the structure. The Petitioner claims to have submitted relevant documentary material to the Corporation upon which by a letter dated 11<sup>th</sup> March 2002, the Municipal Corporation informed the Petitioner that he is eligible for alternate accommodation. The Petitioner was informed on 23<sup>rd</sup> December 2002 that an area admeasuring 88.54 sq.ft. was affected by the road widening. The Petitioner was, however, allowed to add the affected area by a vertical extension of the existing structure subject to a restriction on height to 17 feet. The rest of the premises came to be demolished. The case of the Petitioner is that after the shop was demolished, the Fourth Respondent gave him temporary possession of another shop, Shop No.5 since almost 90% of the erstwhile structure was affected by the demolition. On 23<sup>rd</sup> March 2006, MMRDA who is impleaded in these writ proceedings, issued a notice to a person by the name of Shri Jayesh Shah who, it has transpired, is a partner of the Fourth Respondent calling upon the noticee to remove the structure. The Petitioner addressed a representation. An order has been passed on 14<sup>th</sup> August 2006 informing the Fourth Respondent that the structure was liable to be removed. That led to the institution of these

proceedings under Article 226 of the Constitution.

The contention of the Petitioner before the Court has been that his eligibility in respect of Shop No.Ex-5B must be regarded as being concluded by the earlier action of the Municipal Corporation which was pursued in the year 2001-02. At that stage, since a part of the structure was affected, the Petitioner was granted permission to add the affected area to the existing structure. Moreover, it is submitted that in that view of the matter, there is no reason why the Petitioner should be denied the benefit of alternative accommodation in accordance with the policy that has been implemented by the Second Respondent and the Third Respondent. An affidavit in reply has been filed by the Second Respondent in which it has been stated that the notice dated 14<sup>th</sup> August 2006 was not in fact addressed to the Petitioner. Moreover, it was submitted that the Municipal Corporation finalised the eligibility of occupants to alternate accommodation by way of rehabilitation. The Municipal Corporation has, according to the MMRDA, determined in its letter dated 9<sup>th</sup> August 2006 that the Petitioner had not produced any documents to

show that the structure was authorised. The Petitioner has stated in rejoinder that after the demolition of his shop by the Municipal Corporation, he was given temporary possession of Shop No.5 by the Fourth Respondent who is the landlord. Since in 1991 the erstwhile structure was demolished, the Fourth Respondent has allotted Shop No.5 by way of temporary accommodation to the Petitioner. The Petitioner had relied upon documents relating to his original shop in support of his case.

At the hearing of the petition, Counsel appearing on behalf of MMRDA drew the attention of the Court to the fact that the notice in the present case was not issued to the Petitioner in the first place, but to one Jayesh Shah. Now the Court has been informed by the Fourth Respondent that Jayesh Shah is a partner and that he does not claim any interest in respect of Shop No.Ex-5B for which the Petitioner has claimed an entitlement. In order to obviate any dispute in the matter, Counsel appearing on behalf of the Fourth Respondent has placed an affidavit of Jayesh Shah on the record of these proceedings in which the deponent has affirmed that though he disputes the notice

regarding Shop No.Ex-5B, he shall not claim any alternate premises in respect thereof and that he has no objection if alternate accommodation is given to the Petitioner. Counsel appearing on behalf of MMRDA has also fairly placed on record, a copy of the finalised list of eligible occupants, Annexure-2 issued by the Municipal Corporation in which the Petitioner has been held eligible in respect of his commercial premises. However, Counsel states that the Petitioner would be entitled to one alternate premises only in respect of his occupation of Shop No.Ex-5B and that the Petitioner ought not to claim any additional premises in lieu of the shop which was temporarily allotted by the Fourth Respondent. Counsel for the Petitioner is agreeable to this suggestion that he would be entitled to only one alternative accommodation in lieu of Shop No.Ex-5B.

In the circumstances, having regard to the aforesaid circumstances, it would be appropriate to dispose of these proceedings by directing the Second Respondent, in view of the eligibility of the Petitioner to alternate accommodation in lieu of the erstwhile premises of Shop No.Ex-5B, to take necessary steps in

accordance with law for the allotment of alternate accommodation in accordance with the policy that is being implemented. It is clarified that the Petitioner is entitled only to one set of commercial premises in respect of his tenancy of Shop No.Ex-5B. The petition is accordingly disposed of. There shall be no order as to costs.

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